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 7 SWIdent, LLC, a California Limited Liability Company
 (erroneously sued as SWIdent, Inc., a limited liability corporation)

9 **UNITED STATES DISTRICT COURT**
 10 **NORTHERN DISTRICT OF CALIFORNIA**

11 NACIO SYSTEMS, INC., a Nevada Corporation,

12 Plaintiff,

13 v.

14 HERBERT GOTTLIEB and SWIdent, INC., a
 15 California LLC,

16 Defendants.

CASE NO. C 07 3481 PJH

**DECLARATION OF RICHARD J. IDELL IN
 SUPPORT OF MOTION FOR ORDER
 STAYING LITIGATION AND
 COMPELLING ARBITRATION OF ALL
 CLAIMS**

FILED CONCURRENTLY:
NOTICE OF MOTION AND MOTION;
DECLARATION OF HERBERT GOTTLIEB;
REQUEST FOR JUDICIAL NOTICE;
[PROPOSED] ORDER

Date: October 24, 2007

Time: 9:00 a.m.

Place: Courtroom 3, 17th Floor

Complaint Filed: July 3, 2007

Honorable Phyllis J. Hamilton Presiding

I, Richard J. Idell, do state as follows under the penalty of perjury:

1. I am an attorney at law licensed to practice before all of the courts of the State of California and attorney for the Defendants HERBERT GOTTLIEB and SWIdent, LLC, a California limited liability company, erroneously sued herein as SWIdent, INC., a California limited liability

1 corporation ("Defendants").

2 2. I am familiar with all of the records and files in this action and the investigation and
3 underlying facts supporting the requested Entry of Order Staying Litigation and Compelling
4 Arbitration of all Claims.

5 3. All of the matters set forth herein are stated of my own personal knowledge or based on
6 my review of the files and records in this action, and if sworn as a witness I could testify competently
7 to the matters set forth herein.

8 4. On or about July 3, 2007, NACIO filed a Complaint in the United States District Court,
9 Case No. C 07 3481 PJH for (1) Copyright Infringement, (2) Misappropriation of Trade Secrets, (3)
10 Common Law Misappropriation, (4) Breach of Fiduciary Duty and Breach of the Duty of Loyalty, (5)
11 Unfair Competition under California Business and Professions Code Section 17200, (6) Theft of
12 Corporate Opportunity, and (7) Conversion. A true and correct copy of the Complaint is attached
13 hereto as Exhibit "A." Also, see the Request for Judicial Notice filed herewith.

14 5. All of the causes of action alleged by NACIO are arbitrable. There were two
15 Agreements between the parties (see Exhibits "A", "B" and "C" to the Declaration of Herbert Gottlieb
16 filed herewith). These Agreements both contain an unequivocal agreement to arbitrate any disputes
17 arising from those Agreements.

18 6. All of the causes of action alleged in NACIO's federal Complaint arise out of Mr.
19 GOTTLIEB's former employment, and then consultant relationship, with NACIO. As such, the issues
20 contained in Plaintiff's Complaint are covered by the arbitration clauses set forth in the Agreement.

21 7. Defendants contend that all of the claims set forth in this United States District Court
22 action would have been compulsory counter-claims in the arbitration proceeding and the claims have
23 been waived because they were not brought at that time. However, Defendants will submit that
24 question to the arbitrator for decision. //

25 I declare under penalty of perjury the foregoing is true and correct and that this Declaration was
26 executed on the 18th of September, 2007 in San Francisco, California.

Richard J. Idell

PROOF OF SERVICE

I am employed in the City and County of San Francisco, State of California in the office of a member of the bar of this court at whose direction the following service was made. I am over the age of eighteen years and not a party to the within action. My business address is Idell & Seitel, LLP 465 California Street, Suite 300, San Francisco, California 94104.

On September 19, 2007, I served the following document(s):

**DECLARATION OF RICHARD J. IDELL IN SUPPORT OF MOTION FOR ORDER
STAYING LITIGATION AND COMPELLING ARBITRATION OF ALL CLAIMS;
MEMORANDUM OF POINTS AND AUTHORITIES**

- by **ELECTRONIC MAIL**. As this case is subject to the United States District Court for the Northern District of California ECF program, pursuant to General Rule 45, upon the filing of the above-entitled document(s) an automatically generated e-mail message was generated by the Court's electronic filing system and sent to the address(es) shown below and constitutes service on the receiving party.

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I certify and declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and I executed this declaration at San Francisco, California.



Suzanne Slavens